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REMARKS

In response to the Office Action, Applicant respectfully requests reconsideration. Claims 1–34, 37, and 38 are pending in this Application. Claims 1, 2, 4, 6, 24, 32, 33, 37, and 38 are hereby canceled; Claims 3, 5, 7–23, 25–31, and 34 are hereby amended.

Telephonic Interview of 08 December 2008

Applicant's representative thanks the Examiner for her time in conducting a telephonic interview on December 8, 2008 with attorney Mazzaresse. In view of that discussion, the claims have been amended to emphasize systems and methods for diagnostic imaging in open surgical procedures.

Claim Amendment

Independent Claims 3 and 34 are hereby amended to recite, “an open surgical procedure” (Emphasis added). This amendment finds support in the Specification at page 2, line 16 and page 11, lines 23–24.

Independent Claim 3 is further amended to recite a “visible light source further capable of providing conventional lighting for the surgical field.” This amendment finds support in the Specification at page 11, lines 21–23 and is offered to clarify the fact that the visible light source used for imaging may also be used to enable the surgical team to see the subject. No new matter has been added.

Independent Claim 3 is further amended to recite an “electronic imaging device disposed away from the surgical field and adapted to capture images propagating through free space between the surgical field and the electronic imaging device.” This amendment finds support in the Specification at page 2, lines 12–15 through page 4, line 16; page 5, line 27 through page 6, line 13; and Fig. 1 and page 10, line 25 through page 11, line 5. This amendment is offered to clarify the fact that the claimed electronic imaging device does not need to be inside or in contact with the surgical field. No new matter has been added.

All other claim amendments have been undertaken to clarify the subject matter claimed, to eliminate multiple dependant claims, to correct claim dependencies, and to address minor errors of a typographical nature, as well as to remove from consideration in the present application those other independent claims directed to other embodiments of the applicant's invention. No new matter has been added by these editorial amendments.

Claim Rejections - 35 U.S.C. §103

Claims 1-25, 28-34, 37, and 38 were rejected under 35 U.S.C. §103 as being obvious over Imaizumi. This amendment cancels Claims 1, 2, 4, 6, 24, 32, 33, 37, and 38, thus leaving only Claims 3, 5, 7-23, 25, 28-31, and 34 subject to this rejection. Applicant respectfully disagrees with the outstanding rejection. While Imaizumi generally teaches an endoscopic system, as noted in the telephonic Interview with the Examiner and her SPE on 08 December 2008, it neither teaches nor implies a system that operates in an "open" surgical field, as that term is understood by one of ordinary skill in the art, described in the specification, and recited in each pending independent Claim. Accordingly, Imaizumi cannot provide a basis for an obviousness rejection. Applicants therefore respectfully request reconsideration and withdrawal of this rejection.

Claims 26 and 27 were rejected under 35 U.S.C. §103 as being obvious over Imaizumi in view of U.S. Patent No. 6,167,297 (hereinafter Benaron). This amendment cancels Claims 26 and 27, thereby rendering this rejection moot.

Summary

Applicant believes that the Claims as amended are in condition for allowance. A notice to this affect is respectfully requested. Applicants believe that no additional fee is required as a result of this Response. However, the Director is hereby authorized to charge any fees under 37 C.F.R. §§1.16 and 1.17, or to credit any overpayments, to Deposit Account No. 50-4262.

Respectfully submitted on January 2, 2009,

STRATEGIC PATENTS, P.C.

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